COMMISSION ON JUDICIAL SELECTION

APPLICATION

EIGHTH JUDICIAL DISTRICT COURT
DEPARTMENT 29

By

Chris William Davis
(Insert applicant name)

SECTION I: PUBLIC INFORMATION (QUESTIONS 1 THROUGH 47)

Personal Information

1. Full Name: Chris William Davis

2. Have you ever used or been known by any other legal name? No. If so, state name and reason for the name change: Not Applicable.

3. Work Address: 255 East Warm Springs Road, Suite 100, Las Vegas, Nevada 89119.

4. How long have you been a continuous resident of Nevada?

   I have been a continuous resident of Nevada for eighteen (18) years.

5. Age: fifty-six (56) years old.
   (NRS 3.060 states that a district judge must be at least 25 years old.)

Employment History

6. Using the format provided in Attachment "A" please start with your current employment or most recent employment, self-employment, and periods of unemployment for the 20 years immediately preceding the filing of this Application.

   See Attachment "A."

Educational Background

7. List names and addresses of high schools, colleges and graduate schools (other than law school) attended; dates of attendance; certificates or degrees awarded; reason for leaving.

Western High School; 4601 W. Bonanza Road, Las Vegas, Nevada 89107; September 1975 - June 1977; High School Diploma; Early Graduation.

Brigham Young University; Provo, Utah 84602; August 1977 - April 1979, October 1981 - April 1984; January 1985 - August 1985; B. A. in Political Science. I initially left in 1979 to serve a two (2) year mission for the Church of Jesus Christ of Latter-day Saints. I left in 1984 for a brief academic suspension which was the result of a broken marriage engagement which interfered with my ability to concentrate on school work. I then left in 1985 to start my own computer consulting business. I ultimately graduated from Brigham Young University in August 1992.

University of Utah; 201 South 1460 East, Salt Lake City, Utah 84112; September 1989 - May 1992; I left to attend Law School.

8. Describe significant high school and college activities including extracurricular activities, positions of leadership, special projects that contributed to the learning experience.

During High School, I was an active participant in Debate and the Varsity Quiz television program. While in Debate, I took Second (2nd) place in the Clark County Debate Championship.

At Brigham Young University, I was one of the founding student organizers of a statewide exit poll for the 1982 election. To conduct the poll, we recruited eleven (11) other colleges and universities from around the state of Utah. I participated in the creation of a training video which was used to provide instruction to the other colleges and universities on proper polling techniques and led training at Utah State University. I also assisted in the creation of proper exit poll questions which were designed to more fully understand the reasons for the election results. I was given the opportunity to interview Senator Orrin Hatch, which interview was broadcast on election day. On election day, I was charged with supervising pollsters to insure that proper polling techniques were used. After the election, I helped analyze the election data obtained so that the results could be published. The poll was the most accurate predictor of election results in the state of Utah that year, and even accurately predicted the election results of a race that was determined by less than 1% of the vote. The poll still continues to provide Utah's most accurate polling data for local, state, and national elections. *See* http://exitpoll.byu.edu/.

At the University of Utah, I was selected to intern for Speaker of the Utah House of Representatives, Robert Bishop. While working for Speaker Bishop, I was tasked with reviewing legislation to provide input as to the legislation's suitability. I also attended committee meetings on behalf of Speaker Bishop to report on the results of those meetings. I also had the opportunity to draft legislation, which was introduced into the House of Representatives.

9. List names and addresses of law schools attended; degree and date awarded; your rank in your graduating class; if more than one law school attended, explain reason for change.

Cleveland State University, Cleveland-Marshall College of Law; 2121 Euclid Avenue, LB 138, Cleveland, Ohio 44115; August 1992 - May 1993. I left Cleveland-Marshall because I was ranked second (2nd) in my class, which allowed me to transfer to the University of Utah College of Law and take advantage of in-state tuition.

University of Utah; 332 South 1400 East, Salt Lake City, Utah 84112; August 1993 - May 1995; J.D., May 1995; I graduated in the top 25% of my class.

10. Indicate whether you were employed during law school, whether the employment was full-time or part-time, the nature of your employment, the name(s) of your employer(s), and dates of employment.

I was employed part-time during law school at the firm of McMurray, McMurray, Dale and Parkinson, in Salt Lake City, Utah, as a law clerk, from December 1992 to May 1995. After graduation, I was employed by the firm as an attorney.

11. Describe significant law school activities including offices held, other leadership positions, clinics participated in, extracurricular activities.

While at the University of Utah College of Law, I externed for a clinic at the Utah Legal Aid Society and helped litigate family law matters. I was also twice named as a William H. Leary Scholar, an award given to students in the top 10% of their class for a semester.

Law Practice

12. State the year you were admitted to the Nevada Bar.

I was admitted to the State Bar of Nevada in October 1998.

13. Name states (other than Nevada) where you are or were admitted to practice law and your year of admission.

I was admitted to the Utah State Bar in October 1995.

14. Have you ever been suspended, disbarred, or voluntarily resigned from the practice of law in Nevada or any other state? If so, describe the circumstance, dates, and locations.

No, I have never been suspended, disbarred, or voluntarily resigned from the practice of law in Nevada or any other state.

15. Estimate what percentage of your work over the last five years has involved litigation matters, distinguishing between trial and appellate courts. For judges, answer questions 16-20 for the five years directly preceding your appointment or election to the bench.

Over the past five years approximately 80% of my time has been involved in litigation matters. Of that time, approximately 75% is before trial courts and 25% is before appellate courts.

16. Estimate percentage of time spent on (1) domestic/family and juvenile law matters, (2) civil litigation, (3) criminal matters, and (4) administrative litigation.

My percentage of time spent on domestic/family and juvenile law matters is approximately 1%. Approximately 80% of my time is spent on civil litigation, 4% on criminal matters, and 15% on litigating administrative matters.

17. In the past five years, what percentage of your litigation matters involved cases set for jury trials vs. non-jury trials?

Approximately 30% of my litigation matters involved cases set for jury trials, while 70% of my litigation matters involved cases set for non-jury trials.

18. Give the approximate number of jury cases tried to a conclusion during the past five years with you as lead counsel. Give the approximate number of non-jury cases tried to a decision in the same period.

I have not tried any jury cases to a conclusion during the past five years. I have only tried one case to a conclusion in a court of record: *Rojas-Lopez v. Thomason*, Case No. A-09-589685-C, before the Nevada District Court for the Eighth Judicial District. I was sole counsel for the City of North Las Vegas at the bench trial.

In my career, I have been very fortunate to secure judgment on behalf of my clients through motions to dismiss or motions for summary judgment in many of the cases I have litigated. While I have prepared for trial on numerous occasions, the remainder of the court cases were resolved either though mandatory mediation required by Eighth Judicial District Court Rules for cases under $50,000.00, or through settlement on terms favorable to my client.

19. List courts and counties in any state where you have practiced in the past five years.

Nevada Eighth Judicial District Court, Clark County, Nevada.

Nevada Supreme Court, Clark County, Nevada.

United States District Court for the District of Nevada, Clark County, Nevada.

United States Bankruptcy Court for the District of Nevada, Clark County, Nevada.

United States Court of Appeals for the Ninth Circuit, San Francisco, California.

North Las Vegas Justice Court, Clark County, Nevada.

Las Vegas Justice Court, Clark County, Nevada.

20. List by case name and date the five cases of most significance to you (not including cases pending in which you have been involved), and list or describe:
    a. case name and date,
    b. court and presiding judge and all counsel
    c. the importance of each case to you and the impact of each case on you,
    d. your role in the case.

1. I successfully defended Grand Sierra Resorts ("GSR") against in a class action asserting statutory wage and discrimination claims in *Sargent v. Hg Staffing, LLC*, Case No. 3:13-CV-00453-LRH-WGC, filed in 2013. The case was filed in United States District Court for the District of Nevada, before the Honorable Larry R. Hicks, with H. Stan Johnson, Esq. also representing GSR. Plaintiffs were represented by Mark R. Thierman, Joshua D Buck, and Leah Jones. When I was first assigned as counsel, the case had already been provisionally approved as a collective action. I drafted a motion for summary judgment which successfully argued, among other issues, that NRS Chapter 608 did not provide for a private right of action for wages, other than claims for minimum wages. I also successfully argued that the collective action, under the Fair Labor Standards Act, should be decertified, and that state law claims should not be certified as a class action. As the Nevada Supreme Court has not yet decided whether NRS Chapter

608 provides for a private right of action, I had the opportunity to provide the same analysis required of a District Court Judge when facing an issue of first impression.

2. I successfully defended the City of North Las Vegas (the "City") against claims of disability discrimination in *Curley v. City of North Las Vegas*, Case No. 2:09-cv-01071-KJD-VCF, filed in 2009. The case was filed in United States District Court for the District of Nevada, before the Honorable Kent J. Dawson, with Jeffrey F. Barr, Esq. also representing the City and Michael P. Balaban, Esq., representing Michael P. Curley. The case is notable because it is one of the first cases to address the expanded definition of disability under the 2008 amendment to the ADA ("ADAAA"). I served as lead counsel for the City and drafted the motion for summary judgment which successfully argued, among other issues, that Plaintiff was not disabled even under the expanded definition of a disability. Due to the novelty of the issue, I had the opportunity to hone my skills in statutory construction which will serve me well as a District Court Judge.

3. I successfully defended the City against tort claims in *Rojas-Lopez v. City of North Las Vegas*, Case No. A-09-589685-C, filed in 2009. The case was filed in Nevada Eighth Judicial District Court, before Honorable Mark R. Denton and then transferred to the Honorable Nancy L. Allf, with Jeffrey F. Barr, Esq. also representing the City, and Michael H. Hamilton, Esq. representing Plaintiffs. I served as sole counsel at the bench trial of this case and drafted the appellate brief before the Nevada Supreme Court in *City of North Las Vegas v. Rojas-Lopez*, Case No. 5993. This case was important because it is one of the few cases I could not resolve by either motion or settlement. It is also notable because the appellate brief was the first time I argued before the Nevada Supreme Court that the Notice of Claim Statute found in NRS 268.020 did not violate the equal protection clause as held in *Turner v Staggs*, 89 Nev. 230, 235-36, 510 P.2d 879,882-83 (1973). My argument was based on *Agost v. Idaho*, 423 U.S. 993 (1975), which dismissed an appeal of an Idaho Supreme Court decision upholding an almost identical notice of claim statute against an equal protection challenge. I argued that the dismissal in *Agost* was binding precedent under *Hicks v. Miranda*, 422 U.S. 332, 343-44 (1975). In formulating this strategy, I had to rely on my ability to find creative solutions which should serve me well as a District Court Judge.

4. I successfully defended the City against claims of civil rights violations in *Rice v. City of North Las Vegas*, 2:07-cv-01192-RCJ-GWF, filed in 2007. The case was filed in United States District Court for the District of Nevada, before the Honorable Robert C. Jones, with Carrie Torrence, Esq. also representing the City, and Peter Goldstein, Esq. representing Plaintiffs. The case is notable because it involved complex Fourth Amendment issues. The case involved allegations that police officers lacked probable cause and used unreasonable force to detain Plaintiffs. While these issues were raised in a civil case, the same issues are present in criminal cases. Such civil cases are almost never decided on summary judgment due to factual disputes inherent in such cases. Drafting the successful motion for summary judgment required making fine distinctions as to what constitutes probable cause and unreasonable force. I served as lead counsel for the City and drafted the motion for summary judgment.

5. I defended the City against claims of unfair labor practices in *City of North Las Vegas v. Spannbauer*, Nevada Supreme Court Case Number 54849, the appeal of which was filed in 2009. This appeal was filed with the Nevada Supreme Court, and was heard En Banc,

with Chief Justice Parraguirre presiding. Also representing the City were Carrie Torrence, Esq., L. Steven Demeree, Esq., Nicholas Vaskov, Esq., and Jeffrey Barr, Esq. Counsel for Appellee Eric Spannbauer was Daniel Marks, Esq. and Adam Levine, Esq. Counsel for the Nevada Board State of Nevada, Local Government Employee-Management Relations Board was Scott R. Davis, Esq. The case was significant because I was asked to take the lead in this appeal after the opening brief was filed because the lead attorney retired from the City. Because I was assigned to take the lead in the case in mid-briefing, my skills were tested in becoming quickly familiar with a case so that I could draft the reply brief. These are the same quick study skills that would be required of a District Court Judge. I also was required to find innovative methods to tailor new arguments so that they would not be challenged as being raised for the first time in the reply brief. This case was my first opportunity to present oral arguments before an En Banc panel of the Nevada Supreme Court, which provided valuable insights on how each current justice handles an appeal. Because the appeal was unsuccessful, I faced the uphill challenge of drafting a Petition for Rehearing. While such petitions are summarily dismissed, the Supreme Court found that further briefing was necessary to explore issues not fully addressed in the Court's opinion.

21. Do you now serve or have you previously served as a mediator, an arbitrator, a part-time or full-time judicial officer, or a quasi-judicial officer? To the extent possible, explain each experience.

I have had significant experience as a quasi-judicial officer. I served as an attorney law clerk on the Ninth Circuit Court of Appeals and the United States District Court. I had the pleasure of working with two invaluable mentors, the Honorable Lloyd D. George and the Honorable Johnnie B. Rawlinson. While with Judge George, one of my primary responsibilities was to review all of the bankruptcy appeals. I reviewed the entire record before the bankruptcy court and the parties' appellate briefs. Under Judge George's experienced direction, I then drafted proposed opinions deciding the bankruptcy appeals. I also had the opportunity to review numerous motions to dismiss and for summary judgment on a broad range of issues which included contracts, employment discrimination, civil rights, takings, intellectual property, personal injury, governmental immunities, and unfair trade practices. After my review, I would draft proposed orders deciding those motions. I also drafted numerous proposed orders resolving evidentiary issues in both criminal and civil cases. Under Judge George's direction, I also reviewed and finalized proposed jury instructions in both civil and criminal cases. Additionally, I reviewed sentencing reports from pretrial services and opined on whether the proposed sentences complied with federal sentencing guidelines.

Upon completion of my clerkship with Judge George, Judge Rawlinson, offered me a two-year clerkship. She was seeking an experienced law clerk, as she was a newly appointed judge. I therefore became intimately acquainted with the challenges faced by a newly appointed judge. Under Judge Rawlinson's direction, I continued my duties that I performed under Judge George. Judge Rawlinson, however, tasked me with reviewing her most difficult cases.

When Judge Rawlinson was appointed to the Ninth Circuit, she asked that I continue as her law clerk for the next two years. During my clerkship on the Ninth Circuit, I was assigned the most difficult cases by Judge Rawlinson. For example, I was responsible for reviewing all death penalty cases and all cases heard en banc. As Judge Rawlinson's confidence in my abilities grew, I was permitted to have greater input into the ultimate opinion drafted and which opinions would be published. I was one of the few Ninth Circuit law clerks permitted to attend panel

deliberations after the appeal was heard. I also had the opportunity to serve as a mentor to Judge Rawlinson's other law clerks. I was charged with assigning the upcoming cases to the other law clerks. In many instances, Judge Rawlinson requested that I review proposed opinions drafted by other law clerks before she would provide the final review. While I have not actually performed the duties of a District Court Judge, Judge George and Judge Rawlinson, under their kind tutelage, have provided me with first hand experience as to what is required of a judge. Accordingly, my five years of experience with the federal courts have provided me with broad insights to most, if not all, of the civil and criminal issues that will face a Nevada District Court Judge.

I also served as an arbitrator and judge pro tempore in the Eighth Judicial District's short trial program. As an arbitrator, I have entertained discovery disputes, presided over arbitrations, and rendered judgments. As a short trial judge, I have prepared for trial on two (2) occasions. In both instances, however, the cases settled before reaching trial.

I also have quasi-judicial experience as a member of the Nevada State Bar, Functional Equivalency Committee for the past eight years. The Functional Equivalency Committee holds hearings to determine whether applicants for the Nevada State Bar, who have not graduated from an ABA accredited law school, have the functional equivalent education provided by an ABA accredited law school through their education as subsequently augmented by their experience. As a committee member, I am responsible for reviewing petitions, attending hearings, and drafting reports and recommendations to the Nevada Supreme Court.

22. Describe any pro bono or public interest work as an attorney.

I assisted a family from Alabama, pro bono, to obtain guardianship of their adult son who had been admitted to University Medical Center and is unable to respond.

My service on the Functional Equivalency Committee for the past eight years, referenced in question 21, is also part of my pro bono or public interest service.

23. List all bar associations and professional societies of which you are or have been a member. Give titles and dates of offices held. List chairs or committees in such groups you believe to be of significance. Exclude information regarding your political affiliation.

I have been a member of the Functional Equivalency Committee for the past eight years. The Functional Equivalency Committee holds hearings to determine whether applicants for the Nevada State Bar, who have not graduated from an ABA accredited law school, have the functional equivalent education provided by an ABA accredited law school through their education as subsequently augmented by their experience. As a committee member, I am responsible for reviewing petitions, attending hearings, and drafting reports and recommendations to the Nevada Supreme Court.

In the past, I have been a member of the American Bar Association and the Clark County Bar Association. I also have been a member of the Public Lawyers Section of the Nevada State Bar.

24. List all courses, seminars, or institutes you have attended relating to continuing legal education during the past five years. Are you in compliance with the continuing legal education requirements applicable to you as a lawyer or judge?

Yes, I am in compliance with my continuing legal education requirement. *See* Attachment "C."

25. Do you have Professional Liability Insurance or do you work for a governmental agency?

I currently have Professional Liability Insurance.

Business and Occupational Experience

26. Have you ever been engaged in any occupation, business, or profession other than a judicial officer or the practice of law? If yes, please list, including the dates of your involvement with the occupation, business, or profession.

Yes, I owned and operated my own computer consulting business from 1985 to 1989.

27. Do you currently serve or have you in the past served as a manager, officer, or director of any business enterprise, including a law practice? If so, please provide details as to:
    a. the nature of the business,
    b. the nature of your duties,
    c. the extent of your involvement in the administration or management of the business,
    d. the terms of your service,
    e. the percentage of your ownership.

From July 2013 to February 2015, I was engaged in the practice of law as solo practitioner, for which I was 100 percent responsible. A large percentage of my practice involved contract work for other firms.

From 1985 to 1989, I owned and operated my own computer consulting business. My duties primarily involved maintaining DOS based computers for small businesses. The business was a sole proprietorship, where I was sole owner.

28. List experience as an executor, trustee, or in any other fiduciary capacity. Give name, address, position title, nature of your duties, terms of service and, if any, the percentage of your ownership.

I have no experience as an executor or trustee. My practice as an attorney is my only experience in a fiduciary capacity which is fully set forth in my work history.

29. Have you ever held an elective or appointive public office in this or any other state? Have you been a candidate for such an office? If so, give details, including the offices involved, whether initially appointed or elected, and the length of service. Exclude political affiliation.

I have not had the honor of holding elective or appointive public office in the State of Nevada or any other state. I have, however, been a candidate for judge in two (2) elections.

In 2008, I ran for Nevada District Court Judge for Department 14 against Judge Donald Mosley. Despite the uphill battle of running against an entrenched incumbent, I ran against Judge Mosley in an effort to restore integrity to the Nevada District Court. Judge Mosley had been sanctioned for seven (7) separate ethical violations by the Nevada Supreme Court. I survived the primary election, but narrowly lost to Judge Mosley in the general election.

In 2011, I ran for Las Vegas Municipal Court Judge against Judge George Assad. Judge Assad had also been sanctioned by the Nevada Supreme Court. He ordered a woman to be put in jail without cause until her boyfriend appeared in court on an outstanding warrant. In addition to the uphill battle of again facing an incumbent, I was not able to expend any funds on my campaign because I had depleted my savings in my previous campaign. Despite the lack of funding, I came in third of six candidates in the primary. After the primary, I vigorously supported Judge Assad's remaining challenger. The challenger credited my efforts in eventually unseating Judge Assad in the general election.

30. State significant activities in which you have taken part, giving dates and offices or leadership positions.

My significant activities are fully stated in answer to question 32.

31. Describe any courses taught at law schools or continuing education programs. Describe any lectures delivered at bar association conferences.

I have not taught any law schools or continuing education programs.

32. List educational, military service, service to your country, charitable, fraternal and church activities you deem significant. Indicate leadership positions.

I am a member of the Church of Jesus Christ of Latter-day Saints. Between September 1979 and October 1981, I served a two-year mission for the Church of Jesus Christ of Latter-day Saints, in the Chile - Viña del Mar Mission. Serving the people of Chile began my lifelong commitment to public service. From July 2015 to the present, I have served as second counselor in the Durango Ward Bishopric. The Bishopric in the LDS church is responsible for managing a specific congregation. From January 2012 to July 2015, I served as a Gospel Doctrine Instructor. Between 2006 and 2011, I served as an Elders Quorum Instructor. Between 2008 and 2010, I served as Executive Secretary to the Durango Ward Bishop. Between 2004 and 2006, I served as First Counselor in the Durango Ward Elders Quorum Presidency. Between 2002 and 2004, I served as a Durango Ward Missionary.

I am also a member of the Boy Scouts of America and have achieved the rank of Eagle Scout. From July 2015 to the present, I have served as the Charter Organizational Representative. From

2012 to the July 2015, I have served on the Boy Scout Committee for Troop 462 of the Las Vegas Area Council, which committee I chaired. Between 2010 and 2011, I served as a leader of Cub Scout Pack 462 of the Las Vegas Area Council. Between 2001 and 2002, I served as an Assistant Scout Master for Troop 462. During the times when I have not served in a specific position, I continue to be actively involved in scouting by serving as a merit badge counselor and generally assisting Boy Scouts to achieve the rank of Eagle.

33. List honors, prizes, awards, or other forms of recognition.

In law school, I was twice named as a William H. Leary Scholar, which is given to students who are in the top 10% of their class for a semester.

While only 14 years of age, I earned the rank of Eagle Scout in the Boy Scouts of America and throughout my life I have been actively involved in scouting.

34. Have you at anytime in the last 12 months belonged to or do you currently belong to any club or organization that in practice or policy restricts (or restricted during the time of your membership) its membership on the basis of race, religion, creed, national origin or sex? If so, detail the name and nature of the club(s) or organization(s), relevant policies and practices, and whether you intend to continue as a member if you are selected for this vacancy.

No.

35. List books, articles, speeches and public statements published, or examples of opinions rendered, with citations and dates.

Between August 1997 and September 2002, I assisted Judge Lloyd D. George and Judge Johnnie B. Rawlinson with the preparation of numerous judicial opinions, none of which I am permitted to divulge.

36. During the past ten years, have you been registered to vote? Have you voted in the general elections held in those years?

I have been registered to vote in the last ten years and I have voted in the general elections in those years.

37. List avocational interests and hobbies.

My main interest is my family. My wife, son and I enjoy spending time together exploring the diverse beauties of the desert southwest and the State of Nevada. My wife and I (and sometimes our 15 year old son) enjoy the theatre, whether at the Smith Center, Spring Mountain Ranch State Park, Las Vegas Academy for the Arts, or at the Utah Shakespearean Festival. I also enjoy going on Boy Scout camp outs and playing basketball with my son.

I am currently in the process of renovating a cabin in Old Town at Mount Charleston, Nevada, which we bought as a family getaway. Renovating the cabin allows me to use skill I developed as a boy when our family built our own home. I completely gutted the kitchen and bathroom back to the bare studs and even removed the floor joists. I replaced all of the plumbing and most of the electrical. I replaced sheet rock with wood siding. I built new kitchen cabinets

and installed granite counter tops. I also installed new tile and wood floors. The cabin remains a work in progress and provides an opportunity for our family to both work and play together.

Conduct

38. Have you ever been convicted of or formally found to be in violation of federal, state or local law, ordinance or regulation? Provide details of circumstances, charges and dispositions.

Other than the occasional traffic ticket, I have not been found in violation of any law, ordinance or regulation. The only traffic ticket currently on record with the Nevada Department of Motor Vehicles is a citation for speeding on October 29, 2012, in Salt Lake City, Utah, to which I pled guilty and paid a fine.

39. Have you ever been sanctioned, disciplined, reprimanded, found to have breached an ethics rule or to have acted unprofessionally by any court, judicial or bar association discipline commission, other professional organization or administrative body or military tribunal? If yes, explain. If the disciplinary action is confidential, please respond to question 71.

No.

40. Have you ever been dropped, suspended, disqualified, expelled, dismissed from, or placed on probation at any college, university, professional school or law school for any reason including scholastic, criminal, or moral? If yes, explain.

In 1984, while attending Brigham Young University, I was placed on academic suspension which was the result of a broken marriage engagement that interfered with my ability to concentrate on school work. I was ultimately readmitted and graduated from Brigham Young University in August 1992.

41. Have you ever been refused admission to or been released from any of the armed services for reasons other than honorable discharge? If yes, explain.

No.

42. Has a lien ever been asserted against you or any property of yours that was not discharged within 30 days? If yes, explain.

No.

43. Has any Bankruptcy Court in a case where you are or were the debtor, entered an order providing a creditor automatic relief from the bankruptcy stay (providing in rem relief) in any present or future bankruptcy case, related to property in which you have an interest?

No.

Other

44. If you have previously submitted a questionnaire or Application to this or any other judicial nominating commission, please provide the name of the commission, the approximate date(s) of submission, and the result.

On May 1, 2012, I submitted an application for a position as a United States Magistrate Judge with the United States District Court for the District of Nevada. Another applicant was chosen for the position.

On November 12, 2014, I submitted an application for a position as a Nevada Appellate Court Judge for the State of Nevada. Another applicant was chosen for the position.

On December 15, 2014, I submitted an application for the position of Justice of the Peace for the Las Vegas Justice Court. Another applicant was chosen for the position.

On January 28, 2015, I submitted an application for two (2) positions as a Nevada District Court Judge. Other applicants were chosen for the positions.

On September 9, 2016, I submitted an application for the position of Justice on the Nevada Supreme Court. The application is pending.

45. In no more than three pages (double spaced) attached to this Application, provide a statement describing what you believe sets you apart from your peers, and explains what particular education, experience, personality or character traits you possess or have acquired that you feel qualify you as a good district court judge. In so doing, address both the civil (including family law matters) and criminal processes (including criminal sentencing.)

See Attachment "D."

46. Detail any further information relative to your judicial candidacy that you desire to call to the attention of the members of the Commission on Judicial Selection.

I would like to thank the members of the Commission on Judicial Selection for volunteering their time to review my application for Nevada District Court Judge. It would be a great honor to be deemed worthy to be a Judge for the great State of Nevada. As a sixth generation Nevadan, I deeply care about this State. My hope is that as a Judge, I will improve the quality and timeliness of judicial decisions, which will insure access to justice for all Nevadans. If selected as a District Court Judge, I pledge to maintain the highest ethical standards, to be courteous to all that appear before me, and to expend the time necessary to be fully prepared to address the issues faced by the court. I commit to use my unique experience, talents, and abilities to accomplish these goals while I serve the citizens of Nevada.

47. Attach a sample of no more than ten pages of your original writing in the form of a decision, "points and authorities," or appellate brief generated within the past five years, which demonstrates your ability to write in a logical, cohesive, concise, organized, and persuasive fashion.

See Attachment "E."

Attachment A
Employment History

Please start with your current employment or most recent employment, self employment, and Periods of unemployment for the last 20 years preceding the filing of this Application.

Current or Last Employer: Cohen|Johnson\Parker\Edwards.

Phone Number: (702) 823-3500

Address: 3933 Lost Miner Court, Las Vegas, Nevada 89129

From: March 2015, **To:** Present

Supervisor's Name: H. Stan Johnson

Supervisor's Job Title: Partner

Your Title: Attorney

Specific Duties: Civil Litigation and Appellate practice before Nevada and United States Courts. My principal duty is to analyze cases to determine issues which would resolve the case in motion practice. My duties also include trial preparation, preparing legal strategy, legal research, drafting briefs, supervising others in drafting briefs, analyzing opposing briefs, and appearing at oral arguments.

Reason for Leaving: Not applicable, current employment.

Previous Employer:: Solo practitioner as Chris Davis, Esq.

Phone Number: (702) 860-7521

Address: 3933 Lost Miner Court, Las Vegas, Nevada 89129

From: July 2012, **To:** March 2015

Supervisor's Name: None, self-employed

Supervisor's Job Title: None, self-employed

Your Title: Attorney

Specific Duties: Civil Litigation and Appellate practice before Nevada and United States Courts. Duties include client counseling, analyzing trial pleadings, preparing legal strategy, legal research, drafting briefs, supervising others in drafting briefs, analyzing opposing briefs, and appearing at oral arguments.

Reason for Leaving: To take current employment.

Previous Employer: City of North Las Vegas

Phone Number: (702) 633-1050

Address: 2250 Las Vegas Boulevard North, North Las Vegas, Nevada 89030

From: March 2006, **To:** July 2012

Supervisor's Name: Steve Demaree (702) 431-1941

Supervisor's Job Title: Assistant City Attorney

Your Title: Deputy City Attorney

Specific Duties: Senior litigator in the civil division for the North Las Vegas City Attorney, focusing on Civil Rights, Employment, and Personal Injury actions. Served as a mentor for other attorneys in the civil division. Routinely practiced before the Ninth Circuit Court of Appeals, Nevada Supreme Court, United States District Court, Nevada District Court and the Local Government Employee-Management Relations Board.

Reason for Leaving: I resigned over disputes with the newly appointed City Attorney.

Previous Employer: Morris Pickering

Phone Number: (702) 474-9400

Address: 300 South 4th Street, Suite 900, Las Vegas, Nevada 89101

From: September 2002, **To:** March 2006

Supervisor's Name: Steve Morris

Supervisor's Job Title: Managing Partner

Your Title: Attorney

Specific Duties: Appellate and civil litigation practice focusing on complex commercial litigation involving Contracts, Corporations, Administrative, Real Property, Tort, and Employment Law.

Reason for Leaving: I left to return to public service at the City of North Las Vegas.

Attachment A
Employment History Continued

Previous Employer: United States Ninth Circuit Court of Appeals

Phone Number: (702) 464-5670

Address: 333 Las Vegas Boulevard South, Las Vegas, Nevada 89101

From: September 2000, **To:** September 2002

Supervisor's Name: Honorable Johnnie B. Rawlinson

Supervisor's Job Title: United States Appellate Court Judge

Your Title: Senior Attorney Law Clerk

Specific Duties: Assisted newly appointed circuit court judge with creating and implementing chamber policies and procedures. Worked on a broad range of civil and criminal issues brought before Ninth Circuit Court of Appeals including all death penalty cases and cases heard en banc. Reviewed and analyzed court record and appellate briefs. Drafted proposed opinions for review by Judge Rawlinson. Supervised and mentored other attorney law clerks.

Reason for Leaving: Clerkship ended.

Previous Employer: United States District Court for the District of Nevada

Phone Number: (702) 464-5670

Address: 333 Las Vegas Boulevard South, Las Vegas, Nevada 89101

From: September 1998, **To:** September 2000

Supervisor's Name: Honorable Johnnie B. Rawlinson

Supervisor's Job Title: United States District Court Judge

Your Title: Senior Attorney Law Clerk

Specific Duties: Assisted newly appointed district court judge with creating and implementing chamber policies and procedures. Worked on a broad range of civil and criminal issues brought before the federal district court including all bankruptcy appeals. Reviewed and analyzed court record and briefs. Reviewed and analyzed criminal sentencing recommendations. Drafted proposed orders for review by Judge Rawlinson.

Reason for Leaving: Clerkship ended.

Attachment A
Employment History Continued

Previous Employer: United States District Court for the District of Nevada

Phone Number: (702) 464-5500

Address: 333 Las Vegas Boulevard South, Las Vegas, Nevada 89101

From: August 1997, **To:** September 1998

Supervisor's Name: Honorable Lloyd D. George

Supervisor's Job Title: United States District Court Judge

Your Title: Attorney Law Clerk

Specific Duties: Assisted judge with all phases of civil and criminal litigation for the Court, including bankruptcy appeals. Responsibilities included evaluating case files, researching applicable law, writing memoranda, making recommendations, and preparing court orders.

Reason for Leaving: Clerkship ended.

Previous Employer: McMurray, McMurray, Dale & Parkinson (firm has ceased operations)

Phone Number: (801) 444-4300 (phone number of Judge Robert J. Dale, former supervisor)

Address: Honorable Robert Dale, Second District Court, 425 Wasatch Drive, Layton, UT 84041

From: December 1993, **To:** August 1997

Supervisor's Name: Robert J. Dale

Supervisor's Job Title: Partner

Your Title: Attorney

Specific Duties: Appellate and civil litigation practice focusing on commercial litigation involving Contracts, Corporations, Administrative, Real Property, Tort, and Employment Law.

Reason for Leaving: I left to take employment as a federal law clerk.

Attachment C

Attachment C

Nevada Board of Continuing Legal Education

Unaudited CLE Transcript

Tuesday, January 27, 2015
Chris W. Davis
Compliance Group 1
2015 Compliance Period Ending : Thursday, December 31, 2015

Needed for Compliance:

Credits: General: 10 Ethics: 2 Substance Abuse: 0

Fees: 2015 Annual Fee $40.00

This course transcript indicates the courses and distribution of CLE credits for the compliance periods displayed as well as carry over to the next year. The Excess Credits column includes credits exceeding the carry over limit.

Course Date	Course Name	Total Credits	Credits Applied by Year				Carry Forward	Excess Credits
					2014	2015		
12/31/2013	2013 SUBSTANCE ABUSE	1.00S						
12/31/2013	2013 CARRY HOURS	2.50E			2.00E	0.50E		
12/31/2014	Limited Scope Representation 2014: Ethical & Practical Challenges	1.00ED			1.00ED			
12/31/2014	Limited Scope Representation 2014: Ethical & Practical Challenges	1.00GD			1.00GD			
12/31/2014	Schuette v. Coalition to Defend Affirmative Action & the Roberts Court's Vision of a Post-Raci	1.00GD			1.00GD			
12/31/2014	Representing the Pro Bono Client: Consumer Law Basics 2014	5.00GD			5.00GD			
12/31/2014	Critical Start-Up Business & Legal Issues 2014	1.50GD			1.50GD			

If you do not see a course posted to your record, please be advised credits are entered in the order they are received.
REMINDER: Excess ethics can be used towards any general credit deficiency.

Requirements Met or Waived:		N	N
Total Hours Required:	0	0	12
Hours Required By:		12/31/2014	12/31/2015

Posting Codes
E = Ethics
G = General
S = Substance Abuse
A = Authorship
B = Bridge the Gap
D = Alternate Format
H = In-Home Study
F = Faxed
T = Teaching

Nevada Board of Continuing Legal Education

Unaudited CLE Transcript

Friday, September 9, 2016
Chris W. Davis
Compliance Group 1
2016 Compliance Period Ending :
Saturday, December 31, 2016

Needed for Compliance:

Credits: General: 9 Ethics: 2 Substance Abuse: 0

This course transcript indicates the courses and distribution of CLE credits for the compliance periods displayed as well as carry over to the next year. The Excess Credits column includes credits exceeding the carry over limit.

Course Date	Course Name	Total Credits	Credits Applied by Year				Excess Credits *
			2015	2016	CARRY 2017	CARRY 2018	
12/31/2013	2013 SUBSTANCE ABUSE	1.00S					
12/31/2013	2013 CARRY HOURS	2.50E	0.50E				
12/31/2014	Limited Scope Representation 2014: Ethical & Practical Challenges	1.00ED					
12/31/2014	Limited Scope Representation 2014: Ethical & Practical Challenges	1.00GD					
12/31/2014	Schuette v. Coalition to Defend Affirmative Action & the Roberts Court's Vision of a Post-Raci	1.00GD					
12/31/2014	Representing the Pro Bono Client: Consumer Law Basics 2014	5.00GD					
12/31/2014	Critical Start-Up Business & Legal Issues 2014	1.50GD					
4/29/2015	Arbitrator Training & Refresher Course	5.50G	5.50G				
4/29/2015	Arbitrator Training & Refresher Course	0.50E	0.50E				
5/13/2015	Short Trial Pro Tempore Judge Training & Refresher	2.50G	2.50G				
5/13/2015	Short Trial Pro Tempore Judge Training & Refresher	0.50E	0.50E				
12/31/2015	Representing the Pro Bono Client: Advocacy Skills for Administrative Hearings 2015	3.00GD	2.00GD	1.00GD			
12/31/2015	Ethical Issues in Working with Pro Bono Clients	1.00ED	1.00ED				

If you do not see a course posted to your record, please be advised credits are entered in the order they are received.
REMINDER: Excess ethics can be used towards any general credit deficiency.

Previous Carry Forward:	0.50	1.00
Total Credits Taken:	13.00	0.00
Total Credits Applied This Period:	12.50	1.00
Total Credits Carried:	1.00	0.00
Requirements Met or Waived:	Y	N
Total Hours Required:	0	11
Hours Required By:	12/31/2015	12/31/2016

* SCR 210 2(B) Any attorney subject to these rules who completes more than twelve (12) hours of accredited educational activity in any calendar year may carry forward up to twenty (20) hours of excess general credit and four (4) hours of excess ethics credits in any calendar year for the next two (2) calendar years.

Posting Codes
E = Ethics
G = General
S = Substance Abuse
A = Authorship
B = Bridge the Gap
D = Alternate Format
H = In-Home Study
P = Preparation Time
T = Teaching

Attachment D

Attachment D

STATEMENT OF QUALIFICATIONS

I would again like to thank the members of the Committee on Judicial Selection for volunteering their time to review my application for Nevada District Court Judge. I am seeking to be appointed to the Nevada District Court because my career has been devoted to public service. Eleven (11) of my twenty-one (21) years as an attorney have been devoted to public service: six (6) years as a Deputy City Attorney for the City of North Las Vegas, two (2) years as a Senior Attorney Law Clerk working on appeals before the United States Court of Appeals for the Ninth Circuit, and three (3) years working for the United States District Court for the District of Nevada. I also have extensive experience as a litigator in the private sector. My unique experience should prove to be an asset to the Nevada District Court.

While it is difficult to sum up a career in the short pages allotted, my principal legal skill has been understanding the contours of the legal issues with which I am faced. Not only am I able to analyze issues with which I am directly faced, I have the ability to discern the underlying legal issues which must be considered when deciding a case such as jurisdictional issues, due process concerns, and procedural matters which are not readily apparent from the face of the pleadings. I have built my career on not only recognizing these issues, but in expending significant time and energy in familiarizing myself with the different approaches taken by courts across the country when addressing these issues. The aspect of the law I enjoy the most is puzzling through these different approaches to reach the best result. I am seeking an appointment to the Nevada District Court because I genuinely believe that good law requires considered decisions based on precedent, which may not necessarily be found in the parties' briefs. Those who know my work best, are familiar with my ability to work tirelessly on a problem until I am fully acquainted with the rational alternatives and draft my findings in a persuasive fashion. This is the talent, I hope to bring to the Nevada District Court.

For example, when faced with Nevada Supreme Court precedent finding Nevada's Notice of Claim Statute to be unconstitutional on equal protection grounds, I undertook a significant investigation into the underpinnings of the Nevada Supreme Court's decision. I discovered that the three principal cases upon which

the precedent was based, were decisions from other states which had subsequently been overturned. I further found an obscure United States Supreme Court case which had dismissed a direct appeal of an Idaho decision refusing to find a similar notice of claim statute unconstitutional. I used that dismissal to successfully argue that, unlike a denial of certiorari, a dismissal of a direct appeal was a decision on the merits and therefore binding precedent on whether notice of claims statutes violated the equal protection clause. This is just a small example of my ability to wrestle with difficult legal issues.

Currently, I am working for the firm of Cohen|Johnson|Parker|Edwards. My practice involves a wide-range of commercial litigations, involving issues of first impression under Nevada's Uniform Trade Secrets Act, Nevada's Wage Act, and other complex commercial matters. Even though I am now in private practice, I have made time for public service. For eight years, I have served on the Functional Equivalency Committee for the Nevada Bar. As a committee member, I am responsible for reviewing petitions, attending hearings, and drafting reports and recommendations to the Nevada Supreme Court. My public service also includes pro bono work. Recently, I represented Alabama parents seeking guardianship over their adult son who became incapacitated while visiting Las Vegas. This case has introduced me to many family law issues which are not normally part of my practice.

Previously, I served as the primary litigator and appellate counsel for the City of North Las Vegas (the "City"), as a Deputy City Attorney. I defended the City and its police department against most of the civil rights actions involving 42 U.S.C. § 1983, Title VII actions, actions under the Americans with Disabilities Acts ("ADA"), and actions under the Age Discrimination in Employment Act ("ADEA"). Many of the civil rights actions that I litigated involved issues that are equally applicable in criminal cases such as probable cause, unreasonable search and seizure, warrant execution, and excessive force. I also defended the City against almost all of the personal injury actions filed against the City.

Before I left the City, I was charged with litigating all employment cases under Nevada's Local Government Employee-Management Relations Act. I also advised the City on many important legal and policy

issues which included contract negotiations and issues involving Nevada's Open Meeting Law. I was responsible for reviewing all subpoenas served on the City, both civil and criminal, and successfully quashed many improper subpoenas. I also supervised outside counsel in handling eminent domain cases brought against the City. During my tenure with the City, I served as a mentor. As the litigator with the most experience in the civil division, the other attorneys in the office consistently sought my advice and help in preparing and executing litigation strategy.

Prior to coming to the City of North Las Vegas, I worked for the firm of Morris, Pickering and Peterson. My practice primarily involved complex commercial litigation. I was responsible for multi-million dollar cases for clients that included: Nevada Power Company, MGM Resorts International, Harrah's Entertainment Inc., and Granite Construction Company. While at Morris Pickering, I had the opportunity to work closely with Kris Pickering, now a justice with the Nevada Supreme Court.

I have also served as an attorney law clerk on the Ninth Circuit Court of Appeals and the United States District Court. I had the pleasure of working with two invaluable mentors, the Honorable Lloyd D. George and the Honorable Johnnie B. Rawlinson. My five years of experience with the courts have provided me with a broad insight to most, if not all, of the civil and criminal issues that will be faced by a Nevada District Court Judge. As Judge Rawlinson's first law clerk, I became intimately acquainted with the challenges faced by a newly appointed judge. I was assigned the most difficult cases by Judge Rawlinson, and after extensive research and analysis, I would then prepare a proposed opinion for Judge Rawlinson's review. While I have not actually performed the duties of a judge, Judge George and Judge Rawlinson, under their kind tutelage, have provided me with first hand experience as to what is required of an outstanding jurist.

Throughout my career, I have practiced law with the utmost integrity, which I will bring to the Nevada District Court. My experience has provided me with the ability to find creative solutions to complex problems. I have never been satisfied until I have explored all available options. If permitted, I will use all of my talents and preparation on behalf of the Nevada District Court and the people of the great State of Nevada.

Attachment E

Attachment E

CHRIS DAVIS WRITING SAMPLE

I. INTRODUCTION

The Nevada Supreme Court has repeatedly held that a new trial is mandated when the court has declined to offer instructions supported by the law and evidence ***or*** when an unsupported jury instruction is given. Both reasons justify a new trial.

Courts interpreting the Uniform Trades Secrets Act have overwhelming held that information is "***not being readily ascertainable by proper means***" so as to deemed a trades secret, as set forth in NRS 600A.030(5), when the information is actually acquired by improper means, when the means proffered to acquire trade secrets fall below the accepted standards of commercial morality. Despite this clear authority, the Court regrettably declined instruct the jury as to these vital issues of law, even though Defendant Peppermill Casino, Inc. ("Peppermill") and Defendant Ryan Tors ('Tors") admitted that they only acquired the slot machine settings of Plaintiff MEI-GSR HOLDINGS, LLC, d/b/a GRAND SIERRA RESORT ("GSR") by ***theft***, and not by any other means. The undisputed facts also showed that the schemes devised by Peppermill to spy on GSR, concocted only to justify Peppermill's theft after the fact, amounted to nothing more than espionage, which Nevada Trade Secrets Act prohibits.

* * * * *

Because the jury was improperly instructed, the jury erroneously found that GSR's slot machine settings were reasonably ascertainable and not trade secrets. Such a verdict, however, would be impossible if the jury had been properly instructed and is unsupportable under authority interpreting the Uniform Trade Secrets Acts. A new trial is therefore mandated and therefore the Court should grant this motion and reverse the judgment entered in favor of Peppermill.

* * * * *

III. LAW AND ARGUMENT

A. New Trial Is Required Because the Jury Was *NOT* Properly Instructed that a Trade Secret Is Not Readily Ascertainable when Acquired by Improper Means.

A new trial is warranted because this Court declined to instruct the jury that: "Even if information which is asserted to be a trade secrete could have been duplicated by other proper means, the information is not readily ascertainable if in fact it was acquired by improper means." In *Lewis v.*

Sea Ray Boats, Inc., 119 Nev. 100, 106-08, 65 P.3d 245, 249-50 (2003), the Nevada Supreme Court held that the "district court's failure to instruct the jury" on a theory of the case that is supported by the evidence "mandates reversal for a new trial." The Court reasoned that "a party is entitled to have the jury instructed on all of his theories of the case that are supported by the evidence, and that general, abstract or stock instructions on the law are insufficient if a proper request for a specific instruction on an important point has been duly proffered to the court." *Id*. at 106, 65 P.3d at 249.

Here, the Court failed to instruct the jury on very issue which would have prevented the jury from erroneously entering a verdict for Peppermill, whether GSR's slot machine settings were "***not being readily ascertainable by proper means***" so as to be deemed a trades secret. *See* NRS 600A.030(5)[1] (emphasis added). When interpreting the Uniform Trade Secrets Act phrase "***not being readily ascertainable by proper means***," courts have consistently held the fact that "information can be ultimately discerned by others—whether through independent investigation, accidental discovery, or reverse engineering—does not make it unprotectable" because "[e]ven if information potentially could have been duplicated by other proper means, it is no defense to claim that one's product could have been developed independently of plaintiff's, if in fact it was developed by using plaintiff's proprietary designs." *AvidAir Helicopter Supply, Inc. v. Rolls-Royce Corp.*, 663 F.3d 966, 973 (8th Cir. 2011). Applying this rule, in *AvidAir*, the Eighth Circuit found, under the "Uniform Trade Secrets Acts of Indiana and Missouri," that revised helicopter overhaul specifications approved by the FAA were trade secrets and "not being readily ascertainable by proper means," even though the revision was a "relatively minor" update from publicly available information and the defendant could have received "FAA approval for a procedure that [was] based on only publicly available information," because

[1] NRS 600A.030(5), (emphasis added), provides in full:

"Trade secret" means information, including, without limitation, a formula, pattern, compilation, program, device, method, technique, product, system, process, design, prototype, procedure, computer programming instruction or code that:

(a) Derives independent economic value, actual or potential, from not being generally known to, and ***not being readily ascertainable by proper means*** by the public or any other persons who can obtain commercial or economic value from its disclosure or use; and

(b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

defendant's "repeated attempts to secure the revised [overhaul information] without [plaintiff's] approval belies its claim that the information in the documents was readily ascertainable or not independently valuable." *Id*. at 969-75. The rule that "even if information could have been duplicated by other proper means, the information is not readily ascertainable if in fact it was acquired by improper means" has been repeatedly affirmed by courts interpreting the Uniform Trade Secrets Act. *See Reingold v. Swiftships, Inc.*, 126 F.3d 645, 652 (5th Cir. 1997) (holding under Louisiana Uniform Trade Secret Act that "protection will be accorded to a trade secret holder against disclosure or unauthorized use gained by improper means, even if others might have discovered the trade secret by legitimate means").[2]

These holdings fully comport with the plain language of Nevada's Uniform Trade Secrets Act. Under the Act, information is a trade secret when the information is "not ***being*** readily ascertainable by proper means. . . ." *See* 600A.030(5) (emphasis added). Accordingly, to be deprived trade secret status

[2] *See also Quantum Sail Design Grp., LLC v. Jannie Reuvers Sails, Ltd*., Case No. 1:13-CV-879, 2015 WL 404393, at *7 (W.D. Mich. Jan. 29, 2015) (holding under Michigan Uniform Trade Secret Act that "even if all of the information contained in a trade secret can be obtained through investigation and research of publicly-available information, such does not negate the secrecy of such information if a party acquires the secret information through unfair or improper means"); *CheckPoint Fluidic Sys. Int'l, Ltd. v. Guccione*, 888 F. Supp. 2d 780, 797 (E.D. La. 2012) (holding under Louisiana Uniform Trade Secret Act that "protection will be accorded to a trade secret holder against disclosure or unauthorized use gained by improper means, even if others might have discovered the trade secret by legitimate means"); *U.S. Land Servs., Inc. v. U.S. Surveyor, Inc*., 826 N.E.2d 49, 64 (Ind. Ct. App. 2005) (holding under Indiana's Uniform Trade Secrets Act that "even if information potentially could have been duplicated by other proper means, it is no defense to claim that one's product could have been developed independently of plaintiff's, if in fact it was developed by using plaintiff's proprietary designs"); *In re Wilson*, 248 B.R. 745, 750 (M.D.N.C. 2000) (holding under North Carolina Uniform Trade Secret Act that "even if information potentially could have been duplicated by other proper means, it is no defense to claim that one's product could have been developed independently of plaintiff's, if in fact it was developed by using plaintiff's proprietary designs"); *Pyro Spectaculars N., Inc. v. Souza*, 861 F. Supp. 2d 1079, 1090 (E.D. Cal. 2012) (rejecting, under California's Uniform Trade Secrets Act, a claim that the information on [plaintiff's] Booking Forms is readily available" because "[i]f the information is truly that readily available to the public, it raises the question of why it was necessary for defendant to surreptitiously download, retain, and funnel the Booking Forms and other [plaintiff] information to his new employer in the first place"); *Home Pride Foods, Inc. v. Johnson*, 634 N.W.2d 774, 782 (Neb. 2001) (holding, under the Nebraska Uniform Trade Secrets Act, that customer list was a trade secret that was "not being ascertainable by proper means" because "if the information was readily available, why did the [defendants] pay $800 for a stolen list?"); *DPT Labs., Ltd. v. Bath & Body Works, Inc.*, Case No. CIV.SA-98-CA-664-JWP, 1999 WL 33289709, at *4 (W.D. Tex. Dec. 20, 1999) (holding under the Ohio Uniform Trade Secrets Act that the "theoretical ability of others to ascertain [Plaintiff's] lotion formula from [another] lotion that was previously available on the market does not preclude protection as a trade secret" because "protection will be accorded to a trade secret holder against disclosure or unauthorized use gained by improper means, even if others might have discovered the trade secret by legitimate means").

it is ***not*** enough that information may be readily ascertainable by proper means, but instead, at the time of misappropriation, the information must "not ***being*** readily ascertainable by proper means." *See Merriam–Webster Dictionary*, Present Participle, http://www.merriam-webster.com/dictionary/present participle (last visited April 4, 2016) (defining a present participle as "a verb form that ends in '-ing' and that is used with 'be' to refer to action that is happening at the time of speaking or a time spoken of "); *see also Mangarella v. State*, 117 Nev. 130, 133, 17 P.3d 989, 991 (2001) (explaining that "[s]tatutes should be given their plain meaning" and "there is a presumption that every word, phrase, and provision in the enactment has meaning"). While Peppermill introduced evidence that of various surreptitious schemes that might have discovered GSR's slot machine settings, Peppermill offered absolutely ***no*** evidence that GSR's slot machine setting were actually ***being*** readily ascertainable by Peppermill by proper means at the time of Peppermill's admitted misappropriation of GSR's slot machine settings. To the contrary, the fact that Peppermill acquired GSR's slot machine settings by improper means is not in dispute.

On July 12, 2013, GSR caught Tors red handed using his unauthorized key to steal information from GSR's slot machines on orders from Peppermill. *See* Trial Ex. 112(a), NGC Settlement, ¶ 1; Trial Ex. 12(a), NGC Complaint, ¶¶ 12-16; *see* Exhibit 1 Trial Tr., Tors Testimony at 215. Peppermill admitted that "over a period of time beginning in at least 2011" until "July 12, 2013," Peppermill "knew of, approved of, and directed" Ryan Tors to use "a slot machine 'reset' key to obtain theoretical hold percentage information from slot machines belonging to . . . the Grand Sierra Resort and Casino," along with "numerous" other casinos. *See* Trial Ex. 112 (a), NGC Settlement, ¶ 1; Trial Ex. 12(a), NGC Complaint, ¶¶ 12-18. Peppermill admitted that this egregious conduct violated NGCR 5.011 and NRS 463.170(8), "was an unsuitable method of operation" and justified sanctions "in the total amount of ONE MILLLION DOLLARS and NO CENTS ($1,000,000.00)." *See* Trial Ex. 112(a), NGC Settlement, ¶ 1, 3; Trial Ex. 12(a), NGC Complaint, at ¶¶ 23-27, 32-36, 41-46.

Despite the clear Uniform Trade Secret Rule that "even if information could have been duplicated by other proper means, the information is not readily ascertainable if in fact it was acquired by improper means," and the undisputed fact that Peppermill acquired GSR's slot machine settings by improper means, this Court declined to provide an instruction offered by GSR that: "Even if the

information which is asserted to be a trade secret could have been duplicated by other proper means, the information is not readily ascertainable if in fact it was acquired by improper means." *See* Plaintiff's Offered and Rejected Jury Instructions No. 2 and No. 3, filed January 1, 2016. By rejecting this instruction, the Court ignored overwhelming legal authority and the undisputed facts supporting the instruction. If the instruction had been appropriately given, the jury could not have reached the verdict that GSR's slot machine settings were readily ascertainable.

For example, in *K & G Oil Tool & Serv. Co. v. G & G Fishing Tool Serv*., 314 S.W.2d 782, 785-88 (Tex. 1958), the Texas Supreme Court held that the design of a magnetic fishing tool was entitled to protection as a trade secret, even though the jury found that the tool could be reverse-engineered "by an examination of the tool without disassembling it," because defendant "did not learn how to make the [plaintiff's] tool or a device similar thereto by observing it in an assembled or unbroken condition, but learned of its internal proportions, qualities and mechanisms by taking it apart despite an agreement that it would not do so." The court reasoned that the "fact that a trade secret is of such a nature that it can be discovered by experimentation or other fair and lawful means does not deprive its owner of the right to protection from those who would secure possession of it by unfair means." *Id*. at 603. Accordingly, in *K & G Oil*, the court concluded, as a matter of law, that information remains a trade secret, despite the ability to ascertain the information by proper means, when the information was actually secured by unfair means.

Peppermill has wrongly argued that *K & G Oil* is not applicable because it was decided under the common law and not the Uniform Trade Secrets Act. The argument, however, has no force when numerous courts, as set forth above, have applied the same rule under the Uniform Trade Secrets Act. The argument ignores the purpose of the Uniform Trade Secrets Act, as "codifying the basic principles of common law trade secret protection." *MAI Sys. Corp. v. Peak Computer, Inc*., 991 F.2d 511, 520 (9th Cir. 1993); *see also Frantz v. Johnson*, 116 Nev. 455, 466, 999 P.2d 351, 358 (2000) (holding that Nevada's Uniform Trade Secrets Act "merely codifies the common law elements of misappropriation of confidential information"); *Uniform* Laws Annotated, Vol. 14 at p. 434 ("The Uniform Act codifies the basic principles of common law trade secret protection"). In *Avnet, Inc. v. Wyle Labs., Inc*., 437 S.E.2d 302, 305 (Ga. 1993), the Georgia Supreme Court held that "Trade Secrets Act has retained the common

law distinction" and therefore common law cases which defined what information may be deemed a trade secret "have not been obviated." The Court reasoned that "statutes are not understood to effect a change in the common law beyond that which is clearly indicated by express terms or by necessary implication" because "[a]ll statutes are presumed to be enacted by the legislature with full knowledge of the existing condition of the law" and "are therefore to be construed in connection and in harmony with the existing law . . . and the decisions of the courts." *Id.*[3] The Nevada Supreme Court reached a similar conclusion in *First Financial Bank v. Lane*, 130 Nev. Adv. Op. 96, 339 P.3d 1289, 1293 (2014), when it ruled that "this court will not read a statute to abrogate the common law without clear legislative instruction to do so." *See also Orr Ditch & Water Co. v. Justice Court of Reno Twp., Washoe Cty*., 64 Nev. 138, 164-65, 178 P.2d 558, 571 (1947) (explaining that "even where the intention to alter, abrogate or change the common-law rule or principle is manifest, and which are: There is a further presumption that the law makers did not intend to alter the common law beyond the scope clearly expressed, or fairly implied"). Peppermill's tortured construction of the statutory definition of "trade secret" would do away with one hundred (100) years common law precedent, even though the more logical construction, which has been universally adopted by courts interpreting the Uniform Trade Secrets Act, would be in harmony with the substantial body of common law precedent. *See Pioneer Hi-Bred Int'l v. Holden Found. Seeds, Inc*., 35 F.3d 1226, 1237 (8th Cir. 1994) (explaining that "[m]any courts have held that

[3] *See Calisi v. Unified Fin. Servs*., LLC, 302 P.3d 628, 631 (Az. App. 2013) (holding that the Uniform Trade Secrets Act "codifies the basic principles of common law trade secret protection" and when "interpreting the UTSA, we are entitled to rely on common law principles in the absence of a conflict"); *BBA Nonwovens Simpsonville, Inc. v. Superior Nonwovens, LLC*, 303 F.3d 1332, 1340 (Fed. Cir. 2002) ("declining to find that the SCTSA [South Carolina Trade Secrets Act] narrowed the definition of 'trade secret' from that existing under the common law" because courts applying the Uniform Trade Secrets Action in other states have applied the common law); *Dicks v. Jensen*, 768 A.2d 1279, 1282 (Vt. 2001) (holding "because the Uniform Act codifies the basic principles of common law trade secret protection . . . cases decided in the absence of a statute are also relevant"); *Ed Nowogroski Ins., Inc. v. Rucker*, 971 P.2d 936, 945 (Wa. 1999) ("the state Uniform Trade Secrets Act is to be construed in harmony with the preexisting common law on trade secrets"); *MAI Sys. Corp. v. Peak Computer, Inc*., 991 F.2d 511, 520 (9th Cir. 1993) (holding the Uniform Trade Secrets Act "codifies the basic principles of common law trade secret protection"); *see also City of Newport v. Fact Concerts, Inc*., 453 U.S. 247, 258 (1981) (holding that a statute "cannot be understood in a historical vacuum" and because the legislature was "familiar with common-law principles . . . they likely intended these common-law principles to obtain, absent specific provisions [in the statute] to the contrary").

the fact that one 'could' have obtained a trade secret lawfully is not a defense if one does not actually use proper means to acquire the information").[4]

[4] *Norbrook Labs. Ltd. v. G.C. Hanford Mfg. Co*., 297 F. Supp. 2d 463, 485-86 (N.D.N.Y. 2003), aff'd, 126 F. App'x 507 (2d Cir. 2005) (explaining it "is no defense in an action of this kind that the process in question could have been developed independently, without resort to information gleaned from the confidential relationship" because "the defendant had no right to obtain it by unfair means"); *Tabs Associates, Inc. v. Brohawn*, 475 A.2d 1203, 1212 (Md. App 1984) ("The mere fact that the means by which a discovery is made are obvious, that experimentation which leads from known factors to an ascertainable but presently unknown result may be simple, we think cannot destroy the value of the discovery to one who makes it, or advantage the competitor who by unfair means . . . obtains the desired knowledge");"); *CPG Products Corp. v. Mego Corp*., Case No. C-1-79-582, 1981 WL 59413, at *12 (S.D. Ohio Jan. 12, 1981) ("When information in the nature of a trade secret is procured by improper means, the fact that the information conceivably could have been obtained by lawful means is irrelevant"); *Nat'l Instrument Labs., Inc. v. Hycel, Inc.*, 478 F. Supp. 1179, 1183 (D. Del. 1979) ("The fact that a trade secret is of such a nature that it can be discovered by experimentation or other fair and lawful means does not deprive its owner of the right to protection from those who would secure possession of it by unfair means . . . obtains the desired knowledge"); *Kubik, Inc. v. Hull,* 224 N.W.2d 80, 89 (Mich. App 1974) ("Even conceding . . . that all the trade secret information, acquired by the Defendants could have been legally obtained through investigation, research and the like, this does not negate . . . their culpability, for they failed to employ legal, proper and fair means in learning these trade secrets"); *E. I. duPont deNemours & Co. v. Christopher*, 431 F.2d 1012, 1015 (5th Cir. 1970) (even though the "means by which the discovery is made may be obvious . . . these facts do not destroy the value of the discovery and will not advantage a competitor who by unfair means obtains the knowledge"); *Standard Brands, Inc. v. Zumpe*, 264 F. Supp. 254, 263 (E.D. La. 1967) ("because this discovery may be possible by fair means, it would not justify a discovery by unfair means"); *Imperial Chem. Indus. Ltd. v. Nat'l Distillers & Chem. Corp*., 342 F.2d 737, 743 (2d Cir. 1965) (holding that although "anyone is at liberty to discover the secret and use it thereafter with impunity, that fact does not excuse the obtaining of a secret by improper means"); *Sperry Rand Corp. v. Rothlein*, 241 F. Supp. 549, 562 (D. Conn. 1964) ("It is no defense in an action of this kind that the process in question could have been developed independently [when] the defendant had no right to obtain it by unfair means"); *Minnesota Min. & Mfg. Co. v. Tech. Tape Corp.*, 684, 192 N.Y.S.2d 102, 118 (Sup. Ct. 1959), aff'd, 226 N.Y.S.2d 1021 (1962) ("The fact that a trade secret is of such a nature that it can be discovered by experimentation or other fair and lawful means does not deprive its owner of the right to protection from those who would secure possession of it by unfair means"); *Franke v. Wiltschek*, 209 F.2d 493, 495 (2d Cir. 1953) (even though "defendants could have gained their knowledge from a study of the expired patent and plaintiffs' publicly marketed product. The fact is that they did not. Instead they gained it from plaintiffs via their confidential relationship, and in so doing incurred a duty not to use it to plaintiffs' detriment"); *Smith v. Dravo Corp*., 203 F.2d 369, 375 (7th Cir. 1953)("The fact that a trade secret is of such a nature that it can be discovered by experimentation or other fair and lawful means does not deprive its owner of the right to protection from those who would secure possession of it by unfair means"); *A.O. Smith Corp. v. Petroleum Iron Works Co. of Ohio*, 73 F.2d 531, 538-39 (6th Cir. 1934), (holding the "mere fact that the means by which a discovery is made are obvious . . . cannot . . . advantage the competitor who by unfair means . . . obtains the desired knowledge"); *Pressed Steel Car Co. v. Standard Steel Car Co.*, 210 Pa. 464, 60 A. 4 (1904) (holding that even though "engineers and draftsmen . . . should have been able to measure the cars made by the company, and to produce in a short time detailed and practical drawings from which the cars could be constructed. They did not do this, for the obvious reason that blue prints of drawings were available and were accurate" and therefore affirmed protection for the company's secret construction design for railroad cars); *Tabor v. Hoffman*, 23 N.E. 12, 13 (N.Y. 1889) ("But, because this discovery may be possible by fair means, it would not justify a discovery by unfair means").

Nevada has merely codified this rule when it adopted the Uniform Trade Secret Act. In fact, Texas has now adopted the Uniform Trade Secrets Act and continues to follow the rule set forth in *K & G Oil*. *See* Herbert J. Hammond, *Texas Uniform Trade Secrets Act*, State Bar of Texas 27th Annual Advanced Intellectual Property Law Course, at p. 14 & n. 177 (2014)(explaining that "[l]iability under TUTSA turns on the use of improper means" and therefore, pursuant to *K & G Oil*, "the mere possibility that a trade secret may be discovered independently by fair means does not deprive the owner of the right to protection from a person who, in fact, secures the secret by improper means").

Both the overwhelming legal authority and the admitted facts support giving the instruction that: "Even if information which is asserted to be a trade secrete could have been duplicated by other proper means, the information is not readily ascertainable if in fact it was acquired by improper means." *See In Bancservices Grp., Inc. v. Strunk & Associates, L.P.*, Case No. 14-03-00797-CV, 2005 WL 2674985, at *2 (Tex. App. Oct. 20, 2005) (instructing the jury that the "fact that a trade secret can be discovered by experimentation and other lawful means does not deprive its owner of protection from those acquiring it by unfair means"). Because the Court did not instruct the jury on this vital issue supported by the evidence, a new trial is mandated.

B. A New Trial Is Required Because the Jury Was *NOT* Properly Instructed that the Means of Acquiring a Trade Secret Are Improper If They Fall Below the Standards of Commercial Morality, Even If They Did Not Involve Fraudulent or Illegal Conduct.

A new trial is warranted because the district court declined to instruct the jury that: "A trade secret is not readily ascertainable when the means of acquiring the information falls below the generally accepted standards of commercial morality and reasonable conduct, even if means of obtaining the information violated no government standard, did not breach any confidential relationship, and did not involve any fraudulent or illegal conduct." This instruction comes from the seminal case of *E. I. duPont deNemours & Co. v. Christopher*, 431 F.2d 1012, 1015 (5th Cir. 1970). In *Christopher*, the Fifth Circuit held that "aerial photography of plant construction [to determine another's secret manufacturing process] is an improper means of obtaining another's trade secret, even though defendant "violated no government aviation standard, did not breach any confidential relation, and did not engage in any fraudulent or illegal conduct" because such conduct falls "bellow the generally accepted standards of

commercial morality and reasonable conduct." 431 F.2d at 1014-16. The court reasoned that "[w]e should not require a person or corporation to take unreasonable precautions to prevent another from doing that which he ought not to do in the first place." Id. at 1017. The court then pronounced the commandment "thou shall not appropriate a trade secret through deviousness under circumstances in which countervailing defenses are not reasonably available." *Id.*

The National Conference of Commissioners on Uniform State Laws, when drafting the Uniform Trade Secrets Act, expressly adopted the holding of *Christophe*r. In Comment to Section 1 of the Uniform Trade Secrets Act, which are the same definitions adopted by Nevada, the Commissioners cited *Christopher* and concluded that: "Improper means could include otherwise lawful conduct which is improper under the circumstances; e.g., an airplane overflight used as aerial reconnaissance to determine the competitor's plant layout during construction of the plant." 14 Uniform Laws Annot. Uniform Trade Secrets Act with 1985 Amendments § 1, comment, p. 538-539 (citing *E. I. du Pont de Nemours & Co., Inc. v. Christopher*, 431 F.2d 1012 (CA5, 1970), *cert. den.*, 400 U.S. 1024 (1970)). The Commissioners reasoned that "[o]ne of the broadly stated policies behind trade secret law is 'the maintenance of standards of commercial ethics." *Id.* (*quoting Kewanee Oil Co. v. Bicron Corp*., 416 U.S. 470 (1974). Not surprisingly, courts have readily adopted this standard when interpreting the Uniform Trade Secrets Act. S*ee Pocahontas Aerial Spray Servs., L.L.C. v. Gallagher*, Case No. 14-0690, 2015 WL 576161, at *7 (Iowa Ct. App. Feb. 11, 2015) (quoting *Christopher*, supra, and holding, under Iowa Uniform Trade Secrets Act, that "'improper means' does not need to mean that the trade secret was acquired, disclosed, or used in a way that was illegal," but "also means the method in which the trade secret was acquired 'falls below the generally accepted standards of commercial morality or reasonable conduct'"); *Fujitsu Ltd. v. Tellabs Operations, Inc.*, Case No. 12 C 3229, 2013 WL 5587086, at *4 (N.D. Ill. Oct. 10, 2013) (relying upon *Christopher*, supra, and holding that "'improper means'" broadly includes 'means which fall below the generally accepted standards of commercial morality and reasonable conduct'" and "[u]ltimately, it is unlawful for a defendant to appropriate its competitor's trade secrets 'through deviousness'"); *DSMC, Inc. v. Convera Corp*., 479 F. Supp. 2d 68, 79 (D.D.C. 2007) (quoting *Christopher*, supra, and holding, under District of Columbia Uniform Trade Secrets Act, that "'improper means' has been defined as those means that 'fall below the generally accepted standards of

commercial morality and reasonable conduct"); *Q-Tech Labs. Pty Ltd. v. Walker*, Case No. CIV.A.01-RB-1458(CBS, 2002 WL 1331897, at *12 (D. Colo. June 4, 2002) (relying upon *Christopher*, supra, and explaining, under the Colorado Uniform Trade Secrets Act, that a "complete catalogue of improper means is not possible. In general they are means which fall below the generally accepted standards of commercial morality and reasonable conduct"); *System 4, Inc. v. Landis & Gyr, Inc*., 8 F. App'x 196, 200 (4th Cir. 2001) (quoting *Christopher*, supra, and holding, under Maryland Uniform Trade Secrets Act, that a "complete catalogue of improper means is not possible. In general, they are means which fall below the generally accepted standards of commercial morality and reasonable conduct").[5]

The schemes proposed by Peppermill's expert are far more "devious" than legally flying over a construction site to take pictures, which was found improper in *Christopher*. Peppermill's schemes of using confidential information from slot machine manufacturer's concerning the available par settings on GSR's slot machines, available only to legitimate gaming enterprises, and then sending spies to secretly and repeatedly play and/or photograph GSR's slot machines to calculate GSR's par cannot be viewed as proper commercial ethics.

Again, both the overwhelming legal authority and the admitted facts support giving the instruction that a "trade secret is not readily ascertainable when the means of acquiring the information falls below the generally accepted standards of commercial morality and reasonable conduct, even if means of obtaining the information violated no government standard, did not breach any confidential relation, and did not involve any fraudulent or illegal conduct." Because the Court did not instruct the jury on this vital issue supported by the evidence, a new trial is mandated.

* * * * *

[5] *See also Halliburton Energy Servs., Inc. v. Axis Techs., LLC*, 444 S.W.3d 251, 255 (Tex. App. 2014) ("'Improper means" are means that fall below the generally accepted standards of commercial morality and reasonable conduct" and the "mere fact that knowledge of a product might be acquired through lawful means such as inspection, experimentation, and analysis does not preclude protection from those who would secure the knowledge by unfair means"); *CDI Int'l, Inc. v. Marck*, Case No. CIV.A. 04-4837, 2005 WL 146890, at *6 (E.D. Pa. Jan. 21, 2005) ("Improper means refers to those means which fall below the generally accepted standards of commercial morality and reasonable conduct"); *Coll. Watercolor Grp., Inc. v. William H. Newbauer, Inc*., 360 A.2d 200, 205 (Pa. 1976) (finding that spying on plaintiff's operations "for the primary purpose of gathering information" was improper means to acquire a trade secret because "those means which fall below the generally accepted standards of commercial morality and reasonable conduct").